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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-796

UNITED STATES OF AMERICA, *Respondent*

v.

NORMAN JACOBS AND GEORGE KASTENBAUM, *Petitioners*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioner George Kastenbaum prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit which affirmed his conviction and sentence for one count of violating the Hobbs Act, 18 U.S.C. § 1951, and one count of conspiring so to do. 18 U.S.C. § 371.

JURISDICTIONAL STATEMENT

The petitioner was convicted on February 9, 1970, after five days of trial, of one count of violating the Hobbs Act, 18 U.S.C. § 1951, and one count of conspiring so to do. 18 U.S.C. § 371. He was sentenced to five years imprisonment on the conspiracy count and three years on the substantive count, the sentences to run concurrently one with the other. The Opinion of the United States Court of Appeals affirming the convictions was issued on September 29, 1971. A Supplemental Opinion denying a petition for rehearing was issued on November 17, 1971. Neither of these opinions have been officially reported and they are found at A.1a-23a. This Court's jurisdiction is founded upon 28 U.S.C. § 1254.

STATEMENT OF THE CASE

The superseding two-count indictment on which the defendants went to trial charged, R. 1033-1041, App. 11-19,* that from mid-December of 1968 to and including mid March of 1969 the defendants and other persons unknown to the grand jury had conspired to obstruct, delay, and affect interstate commerce by extortion in violation of 18 U.S.C. § 1951. Count I, par. 7, App. 12. The indictment further charged that the defendants conspired to obtain the sum of $50,000 in cash from one Raymond Casella, with the consent of Raymond Casella having been "induced and obtained by the wrongful use of actual and threatened fear directed at the said Raymond Casella." *Id.* Count II, the substantive count, after realleging by adoption

* References throughout are to the Appendix printed for the Court of Appeals (App. —), the Record transmitted to the Court of Appeals (R. —) and the trial transcript (T. —).

many of the allegations of the conspiracy count, Count II, par. 1, App. 18, charged that between the same dates the defendants unlawfully attempted "to commit extortion as that term is defined in" 18 U.S.C. § 1951, by attempting to obtain property from the same Raymond Casella having induced his consent to part with the property by the wrongful use of actual and threatened fear of economic injury." Count II, par. 2, App. 19.

Raymond Casella and his wife, Rosemarie, first came to the Miami Beach area in the summer of 1968. Raymond Casella for a short time worked for Gray Line Bus Company. While working for Gray Line, he formed a corporation known as Kastel Tours, Inc. with the intent of starting a nightclub tour business. He owned no rolling stock and, at that time, he officed in the same building as the defendant Norman Jacobs with whom he became friendly.

Norman Jacobs owned a taxicab and was employed as manager by Central Taxi Radio Service, a group of individual taxi owners who had formed an association to receive radio service.

Casella attempted to obtain bus transportation for his nightclub tour business but, after attempting to lease buses from a variety of organizations in Miami (among them Gray Line, American Sightseeing, Greyhound and Trailways [Tr. 128; App. 62]), he was unsuccessful at securing methods of transportation. Tr. 384-394; App. 184. From time to time he recounted these difficulties to the appellant Jacobs. *E.g.*, Tr. 128; App. 62. At one point, he did secure a lease from A-1 Bus Company but he was advised by a police officer of Miami Beach that A-1 had no authority so to operate. Tr. 128; App. 62.

In mid-December, he made an arrangement with Norman Jacobs to use cabs for his sightseeing business, Tr. 129-130, 787; App. 62-63, 351, only to learn from Jacobs that Jacobs' employer, Central Taxi Radio Service, was precluded by an exclusive contract which they had with Elegente Tours from entering into any competitive lease arrangements. Tr. 130-131, 790; App. 63-64, 353; and see D. Ex. 3. This fact was unknown to Jacobs at the time he originally agreed to provide cabs to Casella. Tr. 790; App. 353. Jacobs gave Casella the names of other cab companies but Casella did not contact them. Tr. 128-130, 790-792; App. 62-63, 353-354. Casella continued to relate his transportation problems to Jacobs on the occasions when they met and inquired of Jacobs about several transportation attorneys, including George Kastenbaum, who had been the lawyer for Jacobs' employer Central Taxi. An appointment was made for Casella to meet with Kastenbaum and the two did meet at Kastenbaum's office on approximately December 22, 1968. Tr. 131-132; App. 63-64. Jacobs was not present at that meeting.

George Kastenbaum, at the time of the trial was 48 years old and had been practicing law in the Miami Beach area since 1951.* During law school, he drove a taxi and he had known Jacobs since that period.

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* Although it is not of record in these proceedings, the Supreme Court of Florida, on May 6, 1970, ordered his suspension from the practice of law. The suspension was based upon a petition filed by the Florida Bar seeking his suspension because of the conviction in this case. The suspension was stayed on July 24, 1970, pending decision by the United States Supreme Court on a petition challenging his suspension. *Florida Bar* v. *George Kastenbaum*, Sup. Ct. of Florida, case No. 39,642. The petition in *George Kastenbaum* v. *The Florida Bar*, was denied. 400 U.S. 878 (1970).

His practice was general in nature with a specialty in transportation and, from time to time, Kastenbaum had represented Central Taxi Radio Service, as well as other taxi companies in the Miami area.

At the meeting between Mr. and Mrs. Casella and Kastenbaum, Casella told Kastenbaum of his problems, told Kastenbaum that Jacobs had assisted him but that "through no fault of [Jacobs]", he was unable to continue his assistance. Tr. 132-136; App. 64-66. According to Casella's testimony, Kastenbaum told him at this meeting of the political situation in Miami Beach and discussed generally what it would cost (a figure in the amount of $10,000 was mentioned) to secure Kastenbaum's help. Casella also testified that Kastenbaum told him: "You can't go to a councilman and offer him $100. You have to give him at least $1,000 or $1,500, and even then you can't be sure . . .". Tr. 138; App. 67. Casella stated that he did not have $10,000, whereupon Kastenbaum advised him that he could not be of assistance. *Id.* Jacobs was not present at this meeting and Kastenbaum's later testimony was that there was no discussion about a $10,000 figure. Tr. 898-897; App. 406-407.

Between December 26, 1968 and January 13, 1969, Casella operated his tour business with buses leased by MTA. Tr. 147-148; App. 72. On or about January 13th, however, MTA discontinued supplying buses. Tr. 164-165; App. 73. At this point, Casella presented his complaints to various state and federal law agencies, one of which requested Casella to return and talk to Kastenbaum. Tr. 360; App. 171.

On January 22 or 23, 1969, Mr. and Mrs. Casella, at the request of one of these law enforcement agencies,

returned to discuss the matter with Kastenbaum. Jacobs did not attend this meeting. Casella told Kastenbaum that Metro would no longer supply transportation, that he was out of business, and that he wanted Kastenbaum's help. Tr. 164-166, 565, 585; App. 73-74, 260, 270. Casella then told Kastenbaum that he had secured a "backer", Tr. 166; App. 73-74, and reminded Kastenbaum that at their prior meeting Kastenbaum had said it would cost $10,000. Tr. 166-167; App. 73-74. Kastenbaum denied having told Casella that, Tr. 166, 896-897; App. 74, 406-407, and suggested further that he "see Norman [Jacobs]". Tr. 167; App. 74. Kastenbaum later testified that this suggestion was made with a view toward Jacobs assisting Casella in obtaining taxi transportation. Tr. 897; App. 407.

The following day, Casella met Jacobs and questioned Jacobs as to whether Kastenbaum had called. Jacobs said he did not. Jacobs said he would call Kastenbaum and then contact Casella. Tr. 168, 492-495; App. 74-75, 236-238.

On or about February 4th, after finding a note ostensibly from Jacobs in his office, G. Ex. 11, Casella went to see Jacobs and, in response to an inquiry, was told that a permit would cost $50,000, the money to be placed in a safe deposit box, the keys to which would be given to Kastenbaum. Tr. 172-173, 799-801; App. 76-77, 357-358. Following police instructions, Casella arranged another meeting with Jacobs on or about February 12th. Also present at this meeting was Joseph Yablonsky, a Special Agent of the Federal Bureau of Investigation, who had assumed the undercover role of James Wexler and who posed as Casella's backer. Tr. 672; App. 306. This conversation was

recorded by means of a body recorder placed on Casella. The discussion was to the effect that if the required permit was not secured there would be no fee and according to Jacobs that he was "just the in-between guy in this whole deal." A series of meeting then took place on February 18th, 25th, 27th and March 5th, at each of which the conversation was recorded by means of a device provided by agents of the Federal Bureau of Investigation. The substance of these discussions was that Kastenbaum was to be paid $50,000 for obtaining a permit, that the money was to be placed in a safe deposit box in a Miami bank, the entry to which could only be jointly by Casella and Jacobs. Tr. 194, 206-207, 901; App. 88, 93-94, 409. In the event Kastenbaum was unable to obtain the license, he was to receive no fee. Tr. 191, 193-195, 253, 440, 464, 803, 903; App. 86, 87-88, 117, 209-210, 222, 359, 410. The money was, in fact, placed in a safe deposit box, Tr. 208-211; App. 94-96, and thereupon removed pursuant to a federal warrant. On March 5th, Kastenbaum presented Casella's application to the Miami Beach City Council and that Council unanimously approved a resolution authorizing issuance of a permit to Casella. Tr. 320; App. 150.

There is no evidence that either Kastenbaum or Jacobs ever did anything to prevent Casella from leasing or operating buses. Tr. 418, 489, 806-809; App. 200, 235, 360-362. There is nothing which could be construed as a threat to either Casella or his "backer" if the money was not paid. Tr. 440-441; App. 210. Casella specifically so testified in response to a series of questions put to him by the court.

> "The Court: The question is, sir: Do you know of any act by George Kastenbaum that prevented you from operating buses?

"The Witness: That prevented me from operating? *No, sir.*" (Tr. 419; App. 200) (Emphasis supplied)

* * * *

"Q. Did Mr. Kastenbaum ever, by word or deed *threaten to do anything to you* if you didn't come up with money for him?

"A. *No, sir.*

"Q. Did he ever *threaten to do anything to Mr. Yablonsky* if Mr. Yablonsky didn't come up with some money for him?

"A. *No, sir.*

"Q. Did he ever *threaten to do anything to Kastle Tours* if Kastel Tours didn't come up with some money for him?

"A. *No, sir.*

"Q. Did he ever say to you, by word or deed, *'You better come up with some money or else'*?

"A. *No, sir.*" (Tr. 440; App. 210) (Emphasis supplied)

Nor is there any evidence, aside from Casella's testimony, from which an inference could fairly be drawn that either Jacobs or Kastenbaum had done any act to prevent Casella from securing either buses or taxi transportation to run his tour business.

REASONS FOR GRANTING THE WRIT

1. The Evidence Wholly Failed To Show the Extortionate Conduct Required for a Conviction in This Case.

The Hobbs Act, 19 U.S.C. § 1951, provides in pertinent part that whoever "obstructs, delays, or affects commerce . . . by robbery or extortion or attempts or conspires so to do" shall be punished in accordance with the dictates of the statute. The indictment in the

case at Bar is drawn under the "extortion" provision of the Act, 18 U.S.C. § 1951(b)(2). R. 1033; App. 11-19. That particular section defines "extortion" as used in the Act to mean—

> "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

Even viewing the evidence in the light most favorable to the government, the facts do not establish any of the extortionate elements. The trial court recognized that this was a unique case. In fact, as the court commented during the course of a colloquy with counsel toward the end of the government's case—

> "I have been unable to find any case which is factually in point with this case. . . . There are plenty of cases with respect to the Hobbs Act and the interpretation of the act, the economic fear being a sufficient factor to constitute duress and all that sort of thing, but they are all under different theories and different principles." Tr. 728.

Indeed, this is a peculiar case for, if a conviction for extortionate conduct can stand in the face of the evidence at bar, it "might thus expose to the risk of prosecution for extortion any businessman who makes a favorable business deal for himself with a person in desperate circumstances, or a lawyer who takes advantage of his client's pressing problem to demand an unusually high fee for his services, or a surgeon who requests an exorbitant charge for operating on a patient facing the danger of imminent death." *People* v. *Dioguardi*, 219 N.Y.S.2d 201, 209 (N.Y. 1961).*

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* Note A. 18a: "A charge of that amount . . . would be highly exhorbitant, indeed preposteous."

The essence of extortion is coercion or duress, which forces one party to part with his property in favor of the person who applies that duress. *United States* v. *Kubacki,* 237 F.Supp. 638, 641 .(E.D. Pa. 1965). Unless there is some form of compulsion, there is no crime. *Nick* v. *United States,* 122 F.2d 660, 671 (8th Cir. 1941). It is necessary to prove "a plan to instill fear [in the victim]," *Carbo* v. *United States,* 314 F.2d 718, 740-741 (9th Cir. 1963) and, while it may not be essential that it be the defendant who initially created the fear in the victim, it is essential that the defendant persuaded the victim, that he "possesses the power to remove or continue its cause, *and instills a new fear by threatening to misuse that power as a device to exact tribute.*" *People* v. *Dioguardi,* 8 N.Y.2d 260, 168 N.E.2d 683, 689 (1960). (Emphasis supplied).

Judged by these standards, there was no action of either of the defendants which could fairly be called extortionate *within the meaning of the statute.* The facts presented by the government were that Casella, in order to carry out his proposed tour business, needed a permit to operate buses in Miami Beach. Obtaining such a permit was not a matter of right, but rather was discretionary with the Miami Beach City Council. He consulted Kastenbaum, who said he could not help but later agreed to secure a permit for $50,000. If no permit was obtained, he was not to receive a dime. Neither Jacobs nor Kastenbaum had anything to do with Casella's business difficulties. They did nothing to prevent him from leasing or obtaining a permit. They did not threaten him in any way; they did not in any manner indicate that if he did not pay they would see that he could not obtain a permit; they

did not say that he would be unable to obtain a permit without their help.

> "Q. Did Kastenbaum at that time or any other time ever tell you that he and he alone was able to control whether you got the permit?
>
> A. He said with a proper fee he could get it.
>
> Q. *Did he say that he and he alone could control whether or not you got it?* He never told you that, did he?
>
> A. To control it? *No sir, he never did.*" Tr. 455; App. 217 (Emphasis supplied)

In short, what we have here is nothing more than a payment which, while large, because of inferences of political bribery, has been extrapolated into extortionate conduct. No demands were made on Casella, nor is there any inference in the record that if Casella did not retain Kastenbaum he would never secure buses.

There is no suggestion that either of the defendants planned "to instill fear [in the victim]." *Carbo* v. *United States, supra.* Similarly, the record is silent as to the instilling of "a new fear by threatening to misuse that power [which the Casellas might have thought the defendants possessed] as a device to exact tribute." *People* v. *Dioguardi, supra.* Even if we were to concede that the Court of Appeals was correct in describing the payment as exorbitant (A.18a), or even if a portion of it was intended to be used to bribe city officials that is insufficient for the government to carry the day. As *People* v. *Dioguardi* teaches, such a rule might "expose to the risk of prosecution for extortion any businessman who makes a favorable deal for himself with a person in desperate circum-

stances or a lawyer who takes advantage of a client's pressing problem to demand an unusually high fee for his services." 219 N.Y.S.2d, at 209.

The Hobbs Act has never before been utilized to secure a conviction in the absence of some specific act traceable to one or more of the defendants, the purpose of which was to instill fear of injury, economic or otherwise, in the mind of the victim and thus exact some tribute. It cannot now, and must not now, be so read. So to interpret the act would place in jeopardy all those who deal with persons in desperate circumstances and who insist upon large payment for their services. The legal and medical professions particularly could be placed in jeopardy. A proper reading of the act, and one which accords with its prior interpretations, is required to avoid this result.

2. The Trial Court and the Court of Appeals Ignored the Critical Distinction Between Extortion and Bribery. Because of This, the Court Excluded Relevant Evidence of Great Significance When It Rejected a Proffer Offered by the Defense That Mr. and Mrs Casella Had Offered a Bribe to a Lt. Dresner of the Miami Beach Police Department. If the Petitioner Was Guilty of Participation in a Bribery Scheme, Then He Was Not Guilty of the Crime Here Charged.

The proffer is as follows:

> "Now, I propose to and I proffer to the Court that I can place evidence on the stand that Mr. and Mrs. Casella did inquire of Lt. Dresner as to whether he was happy with the job he had and whether he would like to make more money, etc. And I can further proffer to the court that Bernice Pollak, the secretary, will testify that shortly after the conversation with Lt. Dresner she had a conversation on a Saturday with Mrs. Casella, at which time Mrs. Casella asked if there was a way to

get several thousand of dollars to Lt. Dresner to help them get out of their problem." Tr. 761.

There was a further proffer:

> "Mr. Beckham: As to the proffer, we would proffer that if Mr. Dresner had been questioned, the testimony from him would have revealed that in October of 1968, around the 14th or 15th or 16th, during one of the conversations that he described here today, he told the Casellas that he had to leave the police station because he was through work there and that he went back into the dressing room and changed clothes to assume duties as a doorman at a business establishment on Miami Beach, what we frequently call moonlighting. He had a second job. And as Mr. Casella came back and followed him into the dressing room area and observed him getting into the uniform for his other job, he asked him how much money he made, whereupon Mr. Dresner replied that only his wife and the United States Government knew how much he made, to which Mr. Casella indicated that if Mr. Dresner cooperated with Mr. Casella perhaps he could get him a job that paid even more, whereupon Mr. Dresner said with a smile to Mr. Casella, 'That sounds a little bit like a bribe,' whereupon Mr. Casella terminated the conversation.
>
> The evidence would be if the witness Bernice Pollak were called during probably within a week of this same occasion, on one occasion in the alleyway outside the office where she and Mr. Dresner worked Rosemarie Casella asked her if she thought that a money payment to Mr. Dresner would be of benefit to them (the Casellas) in getting the permit and whether Mrs. Pollak thought that Mr. Dresner would be receptive to taking a monetary payment in return for them getting bus transportation.

> The evidence from the witness Pollak would further be that on a Saturday, probably the Saturday immediately following the conversations discussed, which would be the Saturday after the 13th, 14th and 15th of October, she invited Rosemarie Casella or she was invited by Rosemarie Casella to go to lunch. The evidence will be that Mrs. Casella picked up Mr. Pollak in the car, they went out and had luncheon. During the luncheon Mrs. Casella mentioned again to Mrs. Pollak the proposition of getting the sum of $2,000, $3,000 or $4,000 to Mr. Dresner and whether Mrs. Pollak thought (1) Mr. Dresner would take it and (2) if this would be helpful to them in getting a permit to operate buses in the City of Miami Beach." (Tr. 914-916; App. 415-416).

Both proffers were rejected. Tr. 763, 918; App. 418.

The proffered evidence was clearly relevant. The Hobbs Act took its definition of extortion from the decisions and laws of the State of New York. *United States* v. *Sweeney,* 262 F.2d 272, 275, fn. 3 (3d Cir. 1959); *United States* v. *Kubacki,* 237 F. Supp. 638, 641 (E.D. Pa. 1965). The laws of the State of New York make a clear distinction between bribery and extortion, a distinction which is obvious from the nature of the two crimes. The essence of bribery is an attempt by the offerer to corrupt the offeree or to play a part in corrupting the offeree for his own advantage. In bribery, the payor voluntarily presents his money hoping to influence some action. *People* v. *Ritholz,* 359 Mich. 539, 552, 103 N.W.2d 481, 487 (1960). New York law makes the distinction between bribery and extortion abundantly clear. The "crimes of bribery and extortion are mutually exclusive". *United States* v. *Kubacki, supra.* In *People* v. *Dioguardi,* a line of cases which culminated in an opinion reported at

219 N.Y.S.2d 201, several defendants, among them a labor official, were convicted of extortion and conspiracy to extort. Following an initial conviction, an intermediate appellate court reversed, 8 A.D.2d 426, 188 N.Y.S.2d 84 (1st Dept. 1959), only to be reversed in turn by New York's highest court, 8 N.Y.2d 260, 203 N.Y.S.2d 870 (1960). At a retrial, 219 N.Y.S.2d 201, 208-209, the indictment against the labor official was dismissed, the court reasoning as follows:

> "The evidence before the Grand Jury shows nothing more than that McNamara upon being approached for aid in relieving the Kerins from a pre-existing and independently instilled fear, gave assurances that he could accomplish the results sought, in return for an unusually large consideration. And that an agreement to that end was made and carried out. Consistent with the settled rule that 'circumstantial evidence to justify the inference of guilt must exclude to a moral certainty every other reasonable hypothesis, no inference can be drawn solely from the evidence of McNamara's profession of power to cause the elimination of Kerins' fear, that also he professed to have the power to continue the fear-inducing situation and threatened to misuse such power if the payments were not made. 'An express intention to remain indifferent or to refuse to act as intermediary unless payment is made cannot be equated with a threat affirmatively to inflict harm'. "Any other rule would have serious and far-reaching consequences. It might thus *expose to the risk of prosecution for extortion* any businessman who makes a favorable deal for himself with a person in desperate circumstances, *or a lawyer who takes advantage of a client's pressing problem to demand an unusually high fee for his services*, or a surgeon who requests an exorbitant charge for operating on a patient facing the danger of imminent death." 219 N.Y.S.2d at 208-09. (Emphasis added). (citations omitted)

The courts in the *Dioguardi* line of cases recognized the clear distinction between extortion and bribery and recognized further that one is inconsistent with the other. See, also, *Hornstein* v. *Paramount Pictures,* 37 N.Y.S.2d 404 (1942), *affirmed* 266 App. Div. 659, 41 N.Y.S.2d 240, *appeal denied* 266 App. Div. 828, 43 N.Y.S.2d 751, *affirmed* 292 N.Y. 468, 55 N.E.2d 740. The distinction has been carried into the Hobbs Act area and the same principles are enunciated in *United States* v. *Kubacki,* 237 F. Supp. 638, 641 (E.D. Pa. 1965). In *Kubacki,* Weidlich was a salesman for a parking meter company seeking a municipal contract. Kubacki was the mayor and a co-defendant, Menker, was a go-between. Defendants asked for a political contribution and the parking meter company ultimately made such a contribution with Weidlich testifying that he "would either have to make the donation . . . or lose the order." *Id.* at 640.

The defendants in *Kubacki* were indicted and convicted under the conspiracy and substantive provisions of the Hobbs Act. Their convictions were set aside upon motion for judgment of acquittal:

> "The definition of extortion used in § 1951 is taken from New York law [(United States v. Nedley, 255 F.2d 350 (3d Cir. 1958)] and New York interpretations of that crime are helpful. Under New York law, the crimes of bribery and extortion are mutually exclusive. One who pays a bribe is equally as guilty as the one who receives it, 'which could never be the case with extortion.' People v. Dioguardi, 8 N.Y.2d 260, 273, 203 N.Y.S. 2d 870, 881, 168 N.E.2d 683, 692 (1960). The court in Dioguardi noted the distinction between bribery and extortion, the essence of the one being the voluntary giving of something of value to influence the performance of official duty,

> the essence of the other being duress. Applying that distinction to this case, the record is devoid of evidence of duress. While Weidlich and Roach spoke of fear that they would not 'get the order', there is nothing to raise that fear above the level of disappointment over failure to obtain a new piece of business. There is nothing in the record to show the harm, if any, either to Weidlich's economic well being, or that of the Koontz Equipment Company or of the Duncan-Miller Company from failure to obtain the order for parking meters. This lack is in sharp contrast to the evidence of fear of destruction of or substantial harm to the businesses involved in the cases cited in footnote 3, supra.
>
> "'Reasonable minds could only arrive at the conclusion that what was involved in this case was bribery. If Weidlich and Roach had any fear at all, it was fear that they would not be successful in their efforts to exercise undue influence. That is not the type of fear contemplated in § 1951. They were 'victims' only to the extent of possible dissatisfaction with the price, otherwise it is clear beyond question that they were willing participants, equally as guilty as the payees, in the scheme to obtain the award of the contract improperly." 237 F. Supp. 638, 641-642.

The petitioner does not have to prove that the evidence in the case at bar would have satisfied the test of interstate bribery under 18 U.S.C. § 1952. What is critical, however, is that in determining the voluntariness or non-voluntariness of Casella's payments, all of the surrounding circumstances are relevant. *Neely* v. *United States*, 274 F.2d 389, 392 (9th Cir. 1960). Casella's conduct cannot be divorced from the conduct of the defendants and if Casella was simply looking for a way to pass money to a public official in order to solve his transportation problems, he was

not the victim of extortion. Either Casella was an unwilling victim of a conspiracy to extort or of an attempted extortion, or he was a willing participant in an attempted bribery of one or more public officials. If the latter, this is not a Hobbs Act case. Yet the trial court precluded the defendants from offering evidence of Casella's willingness to make payments, a willingness to offer money to a public official to accomplish the desired result, a willingness which predated any alleged extortionate conduct. And the Court of Appeals further compounded the petitioner's dilemma by not even addressing itself to this problem.

The Court of Appeals has thus placed itself at odds with the New York courts, from whose law the Hobbs Act arises, and with the Court of Appeals for the Third Circuit which, in *United States* v. *Critchley*, 353 F.2d 358 (3rd Cir. 1965), recognized this clear statutory distinction.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that the petition be granted.

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